

SPENCER BOYER,)
Plaintiff,)
)
v.) Case No. 4:22-cv-00279
)
LIFE INSURANCE COMPANY OF)
NORTH AMERICA,)
Defendant.)

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Life Insurance Company of North America ("LINA") hereby gives notice of the removal of this action to this Court from the Circuit Court of Jackson County, Missouri. The grounds for removal are as follows:

2. Defendant has no record of the Action being served on it. In any event, the Action was served on Defendant no earlier than April 1, 2022. A copy of the Petition and Request for Summons (dated April 1, 2022) is attached as Exhibit A.

4. This case arises from the death of Devin Boyer. Plaintiff alleges to be Devin Boyer's father and sole beneficiary.

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benefit as a "Group Accidental Death insurance benefit through [Devin Boyer's] employment with Duke Manufacturing" (Petition ¶ 5 [emphasis added].)

6. Removal jurisdiction exists based on 28 U.S.C. § 1441(a), which provides that a defendant may remove any civil action filed in a state court of which the district courts of the United States have original jurisdiction. Original jurisdiction in this case exists by reason of 28 U.S.C. §§ 1331 and 1332. Plaintiff's claim (if any) arises under a law of the United States (*i.e.*, the Employee Retirement Income Security Act of 1974 ["ERISA"], 29 U.S.C. § 1001, *et seq.*) Also, there is complete diversity of citizenship between the Plaintiff and the Defendant, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Devin Boyer was a "participant" in an "employee welfare benefit plan" (the "Plan"), and Plaintiff was a "beneficiary" of the Plan, as those terms are defined in ERISA. *See* 29 U.S.C. § 1002(1), (7) & (8).

8. The Plan provides certain benefits, including the accidental death benefits sought by Plaintiff (the "Plan Benefits"). The Plan Benefits are provided pursuant to an insurance contract issued by LINA to Devin Boyer's former employer, Duke Manufacturing Company.

9. Plaintiff would be entitled to the Plan Benefits, if at all, only by virtue of the fact that he is a beneficiary of the Plan. Any and all state law claims for the Plan Benefits asserted by Plaintiff in the Action (including, without limitation, any claim for vexatious refusal to pay the benefits) are completely preempted and replaced by a claim under § 502(a)(1)(B) of ERISA. Accordingly, Plaintiff's only cognizable claim (if any) is to "recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan," under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B).

10. Plaintiff alleges in his Petition to be a resident of Missouri and is, therefore, a citizen of Missouri. (Petition ¶ 1.)

11. Defendant is a Pennsylvania corporation with its principal place of business in Pennsylvania. Therefore, Defendant is a citizen of Pennsylvania under 28 U.S.C. § 1332(c)(1).

12. Defendant is not a citizen of Missouri, and Plaintiff is not a citizen of Pennsylvania.

13. Plaintiff seeks as recovery in this action the amount "deemed to be owed under the policy" and "attorney fees." (Petition at 2.)

14. The total of the value of the allegedly due benefits and a potential award of attorneys' fees exceeds \$75,000 exclusive of interest and costs.

15. The Plan Benefit at issue is \$20,000. Attorneys' fees are available in appropriate circumstances under ERISA § 502(g), 29 U.S.C. § 1132(g). An award of attorneys' fees could exceed \$55,000.

16. Accordingly, the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the Action is between citizens of different states, with the Defendant not being a citizen of the forum state.

17. The United States District Court for the Western District of Missouri, Western Division is the appropriate court for filing a Notice of Removal because the Action is pending in the Circuit Court of Henry County, Missouri.

18. Immediately upon filing this Notice of Removal, LINA will file a copy of this Notice with the Clerk of the Circuit Court of Henry County, Missouri and will provide written notice to counsel for Plaintiff, all in accordance with 28 U.S.C. § 1446(d).

19. A copy of the file for the Action from the Circuit Court of Henry County, Missouri, which includes copies of all pleadings, process and orders served upon LINA in the state court Action, are attached hereto as Exhibit A in accordance with 28 U.S.C. § 1446(a).

20. Under the provisions of 28 U.S.C. § 1441(b) and any other applicable statutes, with which Defendant is in compliance, this Action is removable to the United States District Court for the Western District of Missouri.

Consequently, LINA hereby gives notice of the removal of the Action to this Court.

Respectfully submitted,
STINSON LLP

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CERTIFICATE OF SERVICE

I certify that on April 29, 2022, the foregoing was filed with the Court's ECF system, and that a copy of this document was sent by email and mail to the following:

James C. Johns, johns@jmdllaw.com, Johns, Mitchell, Duncan & Lowe, LLC, 102 W. Jefferson, P.O. Box 309, Clinton, MO 64735, Attorney for Plaintiff

s/Christopher J. Leopold
Attorney for Defendant